Ethics at End of Life: Dementia and VSED

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Abstract

Patients with capacity may refuse life-saving and life-sustaining interventions. But what if the patient is not dependent upon any of these? What if the patient wants to avoid a life that they find intolerable, for example one with severe dementia? While physician aid in dying is prohibited in Minnesota, voluntarily stopping eating and drinking (VSED) is not.

Starting with a case presentation, this session will examine the medical, ethical, and legal aspects of VSED both when the patient requests it herself and when the patient requests it in advance through an advance directive or surrogate. The session will also outline how to handle clinicians’ conscience based objections to VSED and other controversial services.

Learning Objectives

- Compare the legal and ethical distinctions between VSED, on the one hand, and medical aid in dying and withholding or withdrawing life-sustaining treatments, on the other hand.
- Describe the ethical and legal implications of VSED and how to respond to patient requests.
- Evaluate claims for conscience based objections to VSED.

Definition

There are no conflicts of interest or relevant financial interests that have been disclosed by this presenter or the rest of the planners or presenters of this activity that apply to this learning session.

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Disclosures
Physiologically able to take food & fluid by mouth

Voluntary, deliberate decision to stop

**Intent:** death from dehydration

>50% at 8d
>80% at 14d

Other names

**VSED**
Voluntarily stopping eating & drinking

**VRFF**
Voluntary refusal of food & fluid

**PRNH**
Patient refusal of nutrition & hydration

**STED**
Stopping eating & drinking

**VTD**
Voluntary terminal dehydration

Why hasten death

Physical suffering
Pain
Nausea
Dyspnea
Paralysis
Foul-smelling wounds

Existential suffering
Psychic pain
Loss of control
Anxiety
Delirium
Hopelessness

Benefits
Self-defined quality of life
Pt own assessment
Pt own values
Pt own preferences

Burdens

Exit options
Decreasing order of acceptability
Stop LSMT
Accelerate opioids
VSED / VRFF
Palliative sedation (PSU)
PAD / MAID
Euthanasia
Stop LSMT
Accelerate opioids
VSED / VRFF
Palliative sedation

PAD / MAID
Euthanasia

Passive

More uncertainty & reluctance than LSMT

Active

Even CANH
often treated specially

VSED
underserved
bad reputation
Not voluntary
Not complete
Not controlled

Peaceful
Comfortable

VSED
evidence of safety

Anecdotal reports

Michael Miller
Phyllis Schacter
Rudwijn Chobot MD PhD
Stopping Eating and Drinking

A Guide
Peer reviewed literature

One third of 300 responding OR nurses cared for VSED patient

Even though MAID available, “almost twice” chose VSED

“opportunity for reflection, family interaction, and mourning”

Most deaths: “peaceful, with little suffering”

“The literature mostly comprises commentaries and case reports”
“This study . . . is the **most comprehensive** yet undertaken”

708 responding physicians

46% cared for a patient who VSED

| Physicians’ impression that dying process went according to the patient’s wish |
|--------------------|----------------|
| Yes                | 80 (71-87)    |
| Partly             | 18 (11-27)    |
| No                 | 2 (0-8)       |

**Legal concerns**

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<tr>
<th>If partly or no, reason why:</th>
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<tr>
<td>Duration too long</td>
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<tr>
<td>Patient preferred PAS</td>
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<td>Communication problems</td>
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<td>Inability to say goodbye</td>
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<td>Agitation</td>
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**Capacity**

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**Patient with capacity requests VSED now**

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Force feeding is a battery

Does not matter whether food & fluid are “medical treatment”

VSED is not assisted suicide

VSED is not abuse or neglect

“It seems odd that your bodily integrity is [not] violated . . . by sticking a spoon in your mouth.”

“Percentage of homes in each state that got 1 star out of 5, or overall quality.”

Source: CMS 155286 analysis of data from January 2011 to December 2015.
Uncertainty & reluctance among providers

Legal & ethical expert support nearly universal

Patient makes “advance” VSED instruction

Trickier & more controversial

Why “advance” VSED

The New York Times
Complexities of Choosing an End Game for Dementia
By Paula Span  Jan. 31, 2015
Not eligible for MAID

Cannot BOTH Terminally ill Capacity

Can you leave VSED instructions in a MN AD?

Yes

“Health care directive may include . . . health care instructions . . . appoint . . . agent to make health care decisions.”

Minn. Stat. 145C.02

BUT

1

Be very specific on the triggers

“Health care means any care, treatment, service, or procedure to maintain . . . or otherwise affect . . . physical . . . condition.”

Minn. Stat. 145C.01(4)
Do later requests for water *revoke* the AD?


T.M. Pope, *Voluntarily Stopping Eating and Drinking: A Legal Treatment Option at the End of Life*, 17(2) WIDENER LAW REVIEW 363-428 (2011) (with Lindsey Anderson).

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